

APPENDIX 11-1

Charges Related to Customer Activity

Customer Account Record	(Rule 2.04.A. and TPR Rule 2.04.)
Energy Consumption Statement	(Rule 2.04.B.)
Membership Fee	(Rule 3.01.E.(1)c. and TPR Rule 3.01.E.(1)c.)
Deposit from Applicant	(Rule 4.01.B. and TPR Rule 4.01.B.)
Deposit from Landlords	(Rule 4.01.B.(1)Exception)
Deposit Due to Bankruptcy	(Rules 4.01.B.(5) and 4.02.A.(7) and TPR Rules 4.01.B.(5) and 4.02.A.(7))
Deposit from Customers	(Rule 4.02.B. and TPR Rule 4.02.B.)
Late Payment Charge	(Rule 5.07. and TPR Rule 5.07.)
Processing Fee for Levelized Billing Withdrawal	(Rule 5.10.C.(3))
Returned Check Charge	(Rule 5.13. and TPR Rule 5.11.)
Meter Reading Report Charge	(Rule 5.16.B.(3))
Meter Test Fee	(Rule 5.18.C.(1))
Collection Fee	(Rule 6.11.)
Reconnection Fee	(Rule 6.12.C. and TPR Rule 6.11.C.)
Finance Charge on Delayed Payment Agreements	(Rule 6.13.I. and TPR Rule 6.12.J.)
Additional Meter Charge	(Special Rules-Gas 3.05.A.) (Special Rules-Electric 3.06.A.) (Special Rules-Water 3.06.)

Unless otherwise indicated, all Rule numbers refer to the Commission's General Service Rules. TPR refers to the Telecommunications Providers Rules.

SECTION 12. RULES

Rule 12.01. Adoption of Rule Changes, Generally

The Commission may adopt, amend, or repeal, any of its rules, either on its own motion or upon a petition for rulemaking.

Changes to Commission rules shall only be made following notice and a hearing, pursuant to Ark. Code Ann. § 23-2-305. (See Rule 1.03.)

The Secretary of the Commission shall assign an "R" docket number to each rulemaking proceeding.

Rule 12.02. Definitions

(a) Rule

Any Commission statement of general applicability and future effect that implements, interprets, or prescribes law or policy, or describes the organization, procedure, or practice of the Commission.

(b) Rulemaking

The Commission process for the formulation, amendment, or repeal of a rule.

Rule 12.03. Order and Notice of Rulemaking

Prior to the adoption, amendment, or repeal of any rule, the Commission shall issue an order and notice of rulemaking, which shall:

- (a) Give at least twenty (20) days' notice of its intended action. The order shall include a statement of the terms or substance of the intended action or a description of the subject and issues involved, and the time, the place where, and the manner in which interested persons may present their views thereon.
- (b) Afford all interested persons reasonable opportunity to submit written data, views, or arguments, and oral testimony or argument.

Rule 12.04. Newspaper Notice of Rulemaking

Upon issuance of the Order giving notice of the rulemaking proceeding, the Secretary of the Commission shall:

- (a) Transmit a copy of the Order and the proposed rule changes to the Arkansas Legislative Council and to the Joint Interim Committee on Insurance and Commerce of the Arkansas General Assembly. (See Ark. Code Ann. §§ 10-3-309 and 25-15-204.)
- (b) Provide newspaper notice to the public once a week for two (2) consecutive weeks in a newspaper or newspapers having substantial circulation in the State of Arkansas. The notice shall contain the following information:
 - (1) a general description of the rules being adopted, amended, or repealed;
 - (2) the Public Service Commission docket number;
 - (3) a statement that interested persons may submit comments in writing or orally at the hearing;
 - (4) the date, place, and time of the hearing, and that further information may be obtained by writing or calling the Secretary of the Commission. The name and telephone number of the Secretary shall be set forth.

Rule 12.05. Final Rule Sent to Legislative Council, Secretary of State

Upon the issuance of a final order adopting, amending, or repealing a rule, the Secretary shall transmit a copy of said order and rule to the Arkansas Legislative Council and a certified copy to the Secretary of State. (See Ark. Code Ann. §10-3-309; Act 139 of 1985.)

Rule 12.06. Rules Available for Public Inspection

The Secretary shall maintain, display, and make available for public inspection all rules and other written statements or policy or interpretations formulated, adopted, or used, by the Commission.

SECTION 13. DISCOVERY
(See also Rules 3.05. and 3.08. generally.)

These rules are intended to promote just, economical, and expeditious discovery in dockets pending before the Commission. All parties shall fairly adhere to their provisions and shall participate in discovery fully within these rules, and to that end, these rules should be liberally construed. The word "party" herein shall include the Staff of the Commission, any public utility involved in any pertinent docketed matter, and any other person or entity granted status as an intervenor.

Rule 13.01. Discovery Methods

Any party or intervenor to the extent relevant and material to the issues as to which intervention has been granted, may obtain discovery by one or more of the following methods:

- (a) depositions upon oral examination or written questions;
- (b) written interrogatories;
- (c) production of documents or things or permission to enter upon land or other property for inspection and other purposes;
- (d) requests for admission;
- (e) upon Motion to the Commission, by any means otherwise authorized by the Commission.

Parties and intervenors shall be reasonable in the frequency and extent of use of discovery.

Rule 13.02. Scope of Discovery

Unless otherwise limited or expanded by order of the Commission, the scope of discovery shall be as follows:

- (a) In General

Parties may obtain discovery regarding any matter, not privileged or subject to claim for a protective order pursuant to Rule 13.05. herein, which is relevant and material to the issues in the pending docket. Control of

the frequency of use and extent of discovery rests in the sound discretion of the Commission.

(b) **Specific Objects of Discovery**

Any party may discover of any other party subject to the limitations of Rule 13.02.(a), the following:

- (1) The identity, professional qualifications, and location of any person who will present prepared testimony or be called as a witness or who will prepare exhibits for use at any hearing, including discovery of facts known and opinions held by such persons required or developed in anticipation of hearing.
- (2) Business records, studies, data bases, personnel records, or any other document or compilation which will be presented as part of any hearing or upon which any application is based or which serves as the basis for any evidence to be presented at any hearing.

Rule 13.03. Supplementation of Responses

All discovery pursuant to these Rules shall be considered continuing in nature, and any party who has responded to a request for discovery shall supplement its response with information acquired thereafter, and the duty to supplement shall continue until the full hearing on the docket.

Rule 13.04. Sequence and Timing of Discovery

(See also Rule 3.05.(b).)

Discovery may be had by any party or intervenor in any sequence by any method permitted under these rules and the fact that a party is conducting discovery shall not operate to delay discovery by another party, unless the Commission orders otherwise. Discovery by any party may commence upon assignment of a docket number to any matter by the Commission Secretary, and by or upon any intervenor upon order granting intervenor status to any party.

Rule 13.05. Protective Order of Non-Disclosure

(See also Rule 3.07.(a); Ark. Code Ann. § 23-2-316.)

(a) Generally

During discovery, or during later stages of a formally docketed proceeding, any party may file a written motion requesting that the Commission or presiding officer enter a Protective Order of Non-Disclosure (protective order) authorizing it to refuse to disclose, in whole or in part, information sought by another party.

(b) Grounds for Entering a Protective Order

A party seeking a protective order (movant) shall bear the burden of establishing by a preponderance of the evidence that disclosure of the information would have one or more of the following consequences:

- (1) The movant could suffer material damage to its competitive or financial position;
- (2) A trade secret of the movant would be revealed;
- (3) The public interest would be impaired by release of the information;
- (4) The information has no relevance to deciding the issues in the case at hand.

The movant bears the additional burden of establishing that the information at issue has not already been disclosed, and that the information has been maintained as confidential previously while in the movant's possession.

(c) Commission Order on the Disputed Information

The Commission or presiding officer may conclude the dispute by making appropriate findings and orders including, but not limited to, the following:

- (1) The movant has not established adequate grounds to refuse to disclose the information, and that therefore the information shall be made available to the other parties and to the public without restriction; or
- (2) The movant has shown grounds for non-disclosure under subparts (b) (1), (2), or (3) of this Rule, but the information appears to the Commission to be relevant to the case at hand. The movant's

information should therefore be made available only to the attorneys, consultants, and staff members of the Commission and the staff of the parties, and to the Commissioners directly involved in the case. No one else, including officers of the corporate parties, the Commission Staff members, the press and the public, who are not directly involved in the case at hand, shall have access to the information.

Of necessity, those portions of the hearings which may involve the sensitive information which is the subject of the protective order shall be closed to all except those persons to whom the information was made available under this subpart. (See Ark. Code Ann. § 23-2-316.)

- (3) The information sought is irrelevant to the issue at hand and the request for discovery denied.

(d) Affidavit of Non-Disclosure

- (1) If the Commission orders limited disclosure pursuant to subpart (c)(2) of this Rule, the movant may require that every party who is granted access to the information, subject to the order, sign an affidavit of confidentiality. Said affidavit, subject to Commission approval as to substance, may bind those persons having access to the information to the following provisions:
 - (A) That the party shall not disclose the information to any person not immediately involved in the rate case, including senior officers of his corporation; and
 - (B) That the information may be used only for the purpose of pursuing the case at hand, and may be used for no other purpose at all, and most especially not for competitive business purposes; and
 - (C) That improper disclosure by a party or person may result in such civil liabilities or sanctions as may be agreeable to the parties. Provided, however, that if the parties cannot agree among themselves on the terms of the affidavit, the Commission may, by order, fashion an affidavit of its own, to be signed

by all the parties and persons having access to the confidential information.

Rule 13.06. Depositions

A deposition upon oral examination or on written questions pursuant to these Rules may be taken as provided in Rules 27, 28, 30 and 31, Arkansas Rules of Civil Procedure.

Rule 13.07. Stipulating as to Discovery

Unless otherwise ordered by the Commission, parties may by written stipulation modify these procedures for discovery in the interests of convenience and economy.

Rule 13.08. Interrogatories

(a) Procedures for Use

Any party may serve on any other party written interrogatories to be answered by the party served. Interrogatories may be served on any party at any time after a case is docketed or, in the case of intervention, at any time after an intervenor is permitted to intervene. Each interrogatory shall be answered separately and fully in writing, unless it is objected to, in which case the reasons for the objection must be stated in lieu of the answers. The answers are to be signed by the person making them or, in the case of a corporation, by an officer thereof or the attorney for the corporation. Any party in so signing certifies that the information therein is true and correct to the best of his information and belief. Answers or objections to interrogatories shall be served within fifteen (15) days after receipt of service, unless a different time is prescribed by Commission Order.

(b) Scope.

Interrogatories may relate to any matters which may be inquired into under Rule 13.02. of this Section.

(c) Option to Produce Business Records.

Where the answers to an interrogatory may be derived or ascertained from the business records of the party upon whom the interrogatory has been served or from an

examination, audit or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is a sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and to afford to the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries.

Rule 13.09. Production of Documents and Things and Entry upon Land for Inspection and Other Purposes

(a) Scope

Any party may serve on any other party a request:

- (1) to produce and permit the party making the request, or someone acting on his behalf, to inspect and copy any designated documents (including writings, drawings, graphs, charts, photographs, phonorecords, and other data compilations from which information can be obtained, translated, if necessary, by the respondent through detection devices into reasonably usable form), or to inspect and copy, test, or sample any tangible things which constitute or contain matters within the scope of this Section and which are in the possession, custody, or control of the party upon whom the request is served; or
- (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation thereon, within the scope of this Section.

(b) Procedure

The request may, without leave of the Commission, be served upon any party after the case is docketed. The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request

shall specify a reasonable time, place, and manner of making the inspection and performing the related acts.

The party upon whom the request is served shall serve a written response within fifteen (15) days after the service of the request. The Commission may prescribe a shorter or longer time. The response shall state, with respect to each item or category, that inspection and related activities will be permitted as requested, unless the request is objected to, in which event the reasons for objection shall be stated. If objection is made to part of an item or category, the part shall be specified.

Rule 13.10. Requests for Admissions

(a) Scope, Form

A party may serve upon any other party a written request for admission, for purposes of the pending docket, of the truth of any matters within the scope of Rule 13.01 or set forth in the request that relate to statements, representations or opinions of fact, including the authenticity of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The request may be served upon any party at any time after the matter has been docketed. Each matter of which an admission is requested shall be separately set forth. Requests for admission shall be answered within fifteen (15) days after service of the request unless the Commission allows a longer or shorter time. If objection is made, the reasons therefor shall be stated. The answer shall specifically admit or deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. If a party is not possessed of sufficient knowledge or information to admit or deny a request, he shall so state and with particularity specify the extent of his knowledge or information about the matter.

(b) Effect of Admission

Any matter admitted under this Rule is deemed conclusively established unless, for good cause shown,

the Commission permits withdrawal, amendment, or qualification of the admission.

Rule 13.11. Failure to Make Discovery; Sanctions

(a) Motion for Order Compelling Discovery

A party, upon reasonable notice to all parties and all persons affected thereby, may apply for an order compelling discovery as follows:

- (1) An application for an order to a party may be made to the Commission.
 - (2) If a deponent fails to answer a question propounded or submitted, or a corporation or other entity fails to make a designation under Rule 13.08.(c) or 13.09., or a party fails to answer an interrogatory or request for admission submitted under Rule 13.08. or Rule 13.10., or if a party, in response to a request for inspection submitted under Rule 13.09., fails to respond that inspection will be permitted as requested, or fails to permit inspection as requested, the discovering party may move for an order compelling an answer, or a designation, or an order compelling inspection in accordance with the request. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.
- (b) If the Commission denies the motion in whole or in part, it may make such protective order as it would have been empowered to make on a motion pursuant to Rule 13.05.
- (c) Any party to a proceeding who is unable to receive a timely response to discovery requests made in conformity with this Rule and other applicable provisions of these Rules may petition the Commission for an appropriate order directing the nonresponsive party to comply with such discovery request, to the extent and in the manner which the Commission deems appropriate under the circumstances.
- (d) In connection with any order directing discovery, the Commission may take appropriate actions designed to assure prompt and orderly responses thereto. In the event of any failure of any party to comply with any

Commission order of discovery, the Commission may enter an appropriate order providing for the imposition of just and reasonable sanctions including, without limitation, the following:

- (1) An order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the proceeding in accordance with the claim of the party obtaining the order;
- (2) An order refusing to allow the disobedient party to support or oppose designated claims or prohibiting such parties from introducing designated matters in evidence;
- (3) An order striking out filings or parts thereof, or staying further proceedings until the order is obeyed, or dismissing the proceeding or any party thereof, or rendering an order by default against the disobedient party; and,
- (4) An order directing the disobedient party to reimburse the party obtaining the order appropriate costs and expenses; including where applicable reasonable legal and/or expert fees, incurred as a result of the failure to comply with the Commission's order; except to the extent permitted by statute and fees may not be awarded against the State of Arkansas under this Rule.

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

JUL 21 3 43 PM '97

FILED

IN THE MATTER OF THE APPLICATION)
OF SOUTHWESTERN BELL TELEPHONE)
COMPANY FOR APPROVAL OF A STATE-)
MENT OF GENERALLY AVAILABLE TERMS)
AND CONDITIONS PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. 97-197-U

MOTION FOR RECONSIDERATION OF ORDER NO. 6

Comes now Southwestern Bell Telephone Company (SWBT) and, pursuant to Rule 2.11 of the Arkansas Public Service Commission's (Commission) Rules of Practice and Procedure, moves the Commission to reconsider Order No. 6. In support thereof, SWBT states as follows:

1. In Order No. 6 the Commission permitted SWBT's Statement of Generally Available Terms and Conditions (SGAT) to take effect pursuant to §252(f)(3)(B) of the Telecommunications Act of 1996 (the 1996 Act), reserving the right to further review SWBT's SGAT pursuant to §252(f)(4) of the 1996 Act. The reason stated for the Commission's inability to complete its review within the 60-day period prescribed in §252(f)(3) was that "any determination by this Commission whether the prices contained in the SWBT Statement comply with the [cost] standards established by the FCC would be premature pending a ruling by the Eighth Circuit on the appeal of

the FCC rules."¹ On July 18, 1997, the United States Court of Appeals for the Eighth Circuit vacated the FCC pricing rules on jurisdictional grounds.² Consequently, SWBT respectfully requests the Commission to reconsider its decision to review SWBT's SGAT further.

2. Section 252(f)(2) provides that "[a] State commission may not approve such statement unless [it] complies with subsection (d) of this section and Section 251 and the regulations thereunder." The pricing standards for interconnection and network element charges are set forth in §252(d) of the 1996 Act. Section 252(d)(1)(A) provides that a just and reasonable rate shall be based on the cost of providing the interconnection or network element, shall be nondiscriminatory, and may include a reasonable profit. To implement these pricing standards, the FCC adopted cost rules in CC Docket No. 96-98.³ In the Iowa Utilities Board case, the Eighth Circuit ruled that §251 does not authorize the FCC to regulate the rates charged for local services and vacated the rules on intrastate pricing, which the FCC adopted in CC Docket No. 96-98.

3. SWBT's SGAT contains rates approved as just and

¹Order No. 6, p. 2.

²Iowa Utils. Bd. v. FCC, No. 96-3321 (8th Cir. 1997).

³In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98.

reasonable by this Commission in Docket No. 96-395-U. See Affidavit of Edward K. Allis, para. 6, p. 3, which was attached to SWBT's Application. These rates were based on cost studies submitted by SWBT and accepted by this Commission with two modifications. The Commission's acceptance and approval of SWBT's rates and its cost studies in Docket No. 96-395-U demonstrate that the rates set forth for services provided by SWBT pursuant to its SGAT not only substantially comply with the requirements of §9(i) of Act 77 of 1997 but also with the requirements of §252(d) of the 1996 Act because they are based on SWBT's actual costs, are nondiscriminatory, and only include a reasonable profit.

4. SWBT's SGAT fully complies with the requirements of §§251 and 252(d) of the 1996 Act. As such, there is no reason or justification for deferring a final determination on SWBT's SGAT since the pending review of the FCC's cost rules is the only reason identified in Order No. 6 for deferring a final decision on its merits, and that reason has been removed.

WHEREFORE, SWBT respectfully requests the Commission to reconsider its determination to defer a final determination whether SWBT's SGAT complies with federal and state law. SWBT further requests that the Commission approve its SGAT as filed.

Respectfully submitted,

SOUTHWESTERN BELL TELEPHONE COMPANY
1111 West Capitol, Room 1005
P. O. Box 1611
(501) 373-5676

BY: Garry S. Wann
Garry S. Wann, Ark. Bar #76136

CERTIFICATE OF SERVICE

I, Garry S. Wann, hereby certify that a true and correct copy of the foregoing Motion for Reconsideration of Order No. 6 was served on all parties of record, via 1st class mail this 21st day of July, 1997.

Garry S. Wann
Garry S. Wann

Jul 31 2 16 PM '97

FILED

BEFORE THE
ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF THE APPLICATION)
OF SOUTHWESTERN BELL TELEPHONE)
COMPANY FOR APPROVAL OF A)
STATEMENT OF GENERALLY)
AVAILABLE TERMS AND CONDITIONS)
PURSUANT TO THE)
TELECOMMUNICATIONS ACT OF 1996)

DOCKET NO. 97-197-U

STAFF'S RESPONSE TO MOTION FOR CONSIDERATION OF ORDER NO. 6

Comes now the General Staff of the Arkansas Public Service Commission (Staff) and for its Response to the Motion for Reconsideration of Order No. 6, filed in this docket by Southwestern Bell Telephone Company (SWBT) on July 21, 1997 states:

1. SWBT's Motion suggests that the sole reason this Commission did not approve SWBT's SGAT in Order No. 6 was the Commission's determination that approval of the SGAT would be premature pending a ruling by the Eighth Circuit on the appeal of the FCC rules. In addition to referring to the litigation pending at the Eighth Circuit, the Commission also referred to 47 U.S.C. §252(f) and its reference to 47 U.S.C. §251. The Commission noted that §251 requires that the SGAT contain rates, terms, and conditions that are just, reasonable, and non-discriminatory, and in accordance with the requirements of §252. The Commission then stated, "The Commission cannot complete its review of SWBT's Statement in compliance with §252(f)(2) at this time." In Staff's opinion, the preceding quote refers not only to the litigation pending at the Eighth Circuit, but numerous other matters which were brought to the Commission's attention in pleadings and discovery filed in this docket, which prevent a complete review of SWBT's

SGAT.

2. Little has changed since SWBT's SGAT was filed in this docket on May 12, 1997. Although a decision has been rendered by the Eighth Circuit, that decision is subject to reconsideration and appeal. The Eighth Circuit litigation is far from finished.

3. In its Motion, SWBT asserts that, "The Commission's acceptance and approval of SWBT's rates and its cost studies in Docket No. 96-395-U demonstrates that the rates set forth for services provided by SWBT pursuant to its SGAT not only substantially comply with the requirements of §9(i) of Act 77 of 1997 but also with the requirements of §252(d) of the 1996 Act because they are based on SWBT's actual costs, are non-discriminatory, and only include a reasonable profit." In fact, Orders 5 and 6 in Docket 96-395-U directed SWBT to revise its cost studies to remove inflation factors and adjust its cost of capital. After SWBT filed its revised cost studies, AT&T Communications of the Southwest, Inc. filed its Unbundled Network Element Pricing Dispute Memorandum challenging the revised cost studies as not being in conformance with the previous orders in that docket. The issues raised by AT&T's Memorandum have yet to be resolved. Therefore, there has been no finding by this Commission that SWBT's proposed rates are based on costs, are non-discriminatory, and only include a reasonable profit.

6. Staff has not completed its review of the cost studies and other information provided to Staff by SWBT in this docket, nor has Staff determined whether the terms and conditions in SWBT's SGAT need to be non-discriminatory as viewed in comparison with contracts between SWBT and other carriers which existed prior to adoption of the Telecommunications Act of 1996. It should also be noted that many of these preexisting contracts are being canceled or changed, with notice of such cancellations and changes provided to the

Commission in Docket 96-098-U.

7. In view of the fact that a meaningful review of SWBT's SGAT cannot be completed at this time because of pending dockets at the state and federal level, and considering that SWBT will not be harmed as a result of denial of its Motion because SWBT's SGAT has been allowed to take effect, Staff recommends that the Commission deny SWBT's Motion.

WHEREFORE, Staff prays for an order of this Commission denying the Motion for Reconsideration of Order No. 6 filed by Southwestern Bell Telephone Company in this docket on July 21, 1997.

Respectfully submitted,

GENERAL STAFF OF THE ARKANSAS
PUBLIC SERVICE COMMISSION

By:



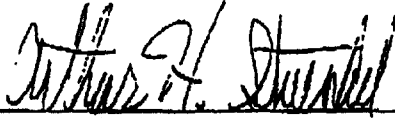
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(501) 682-2047

CERTIFICATE OF SERVICE

I, Arthur H. Stuenkel, hereby certify that a copy of the foregoing has been served on the below-listed parties of record by forwarding the same by first-class mail, postage pre-paid, this 31st day of July, 1997.

Timothy Pickering
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P.O. Box 1611
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J. Mark Davis
Wright, Lindsey & Jennings
200 West Capitol, Suite 2200
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Arthur H. Stuenkel